

No. 13-0327 RV

1. On July 2, 2011, Rasor was a resident of Missouri and purchased a 2007 Dodge for \$19,325.00 in the state of Missouri.

2. On the date of purchase, Rasor lived in the city limits of Wentzville, Missouri.
3. On July 2, 2011, Rasor made application for Missouri title and license with the local Department of Revenue office in Wentzville.
4. Although Rasor's correct address appeared on the application for title presented at the license office, the clerk failed to determine the sales tax owed the City of Wentzville on Rasor's purchase of the 2007 Dodge.
5. At the time of the purchase, the sales tax rate for the state of Missouri was 4.225%, and the St. Charles County rate was 1.75% in unincorporated areas, while the rate in the City of Wentzville was 4.225%. Thus, while Rasor paid the St. Charles County assessment of \$333.36, the local rate would have resulted in an assessment of \$816.48.
6. On February 15, 2013, the Director issued a final decision assessing Rasor \$483.12, the difference between the amount owed for sales tax to the City of Wentzville and the amount paid for local sales tax to St. Charles County.
7. Rasor timely appealed the final decision of the Director on March 4, 2013.

### **Conclusions of Law**

We have jurisdiction to hear Rasor's appeal.<sup>1</sup> Rasor has the burden to prove she is not liable for the amount that the Director assessed.<sup>2</sup> Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application of the law to those facts, the sum of the taxpayer's lawful tax liability for the period or transaction at issue.<sup>3</sup> We may do whatever the law permits the Director to do, and we must do what the Director must do.<sup>4</sup>

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<sup>1</sup> Section 621.050.1. Statutory references, unless otherwise noted, are to RSMo 2000.

<sup>2</sup> Sections 621.050.2 and 136.300.2.

<sup>3</sup> *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

<sup>4</sup> *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

Section 144.070.1<sup>5</sup> provides:

At the time the owner of any new or used motor vehicle, trailer, boat, or outboard motor which was acquired in a transaction subject to sales tax under the Missouri sales tax law makes application to the director of revenue for an official certificate of title and the registration of the motor vehicle, trailer, boat, or outboard motor as otherwise provided by law, the owner shall present to the director of revenue evidence satisfactory to the director of revenue showing the purchase price exclusive of any charge incident to the extension of credit paid by or charged to the applicant in the acquisition of the motor vehicle, trailer, boat, or outboard motor, or that no sales tax was incurred in its acquisition, and if sales tax was incurred in its acquisition, the applicant shall pay or cause to be paid to the director of revenue the sales tax provided by the Missouri sales tax law in addition to the registration fees now or hereafter required according to law, and the director of revenue shall not issue a certificate of title for any new or used motor vehicle, trailer, boat, or outboard motor subject to sales tax as provided in the Missouri sales tax law until the tax levied for the sale of the same under sections 144.010 to 144.510 has been paid as provided in this section or is registered under the provisions of subsection 5 of this section.

Section 144.069 provides:

**All sales of motor vehicles, trailers, boats and outboard motors shall be deemed to be consummated at the address of the owner thereof, and all leases of over sixty-day duration of motor vehicles, trailers, boats and outboard motors subject to sales taxes under this chapter shall be deemed to be consummated unless the vehicle, trailer, boat or motor has been registered and sales taxes have been paid prior to the consummation of the lease agreement at the address of the lessee thereof on the date the lease is consummated, and all applicable sales taxes levied by any political subdivision shall be collected on such sales by the state department of revenue on that basis.**

(Emphasis added). Thus, when the purchaser of a motor vehicle registers that vehicle, he or he must pay all applicable taxes, including all sales taxes levied by a political subdivision. The

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<sup>5</sup> RSMo Supp. 2013.

local sales taxes are determined by the owner's address because § 144.069 deems any such sale to be consummated there.

Finally, § 32.087.13<sup>6</sup> provides:

**Local sales taxes** shall not be imposed on the seller of motor vehicles, trailers, boats, and outboard motors required to be titled under the laws of the state of Missouri, but **shall be collected from the purchaser by the director of revenue at the time application is made for a certificate of title, if the address of the applicant is within a taxing entity imposing a local sales tax under the local sales tax law.**

(Emphasis added). Rasor lived within the City of Wentzville when she registered the 2007 Dodge. The City of Wentzville imposed a higher local sales tax than St. Charles County on the purchase of motor vehicles. Rasor paid local sales tax at St. Charles County's lower rate because that is what the license office instructed her to pay.

Rasor registered her vehicle and paid the tax, believing she had discharged her duty. Over a year and a half later, she received a notice telling her she owed additional tax. This was, undoubtedly, an unpleasant surprise. Although the notice of assessment failed to state it, her underpayment of local sales tax was due to a mistake made by the license office. We empathize with Rasor. However, we must apply the statutes as written, and we lack the power to grant equitable remedies.<sup>7</sup>

Unfortunately, we are unable to exempt Rasor's liability for the additional tax. Because this Commission was created by state statutes, we have only such authority as the statutes give us.<sup>8</sup> Neither the Director, nor this Commission, has the power to change the law.<sup>9</sup> The law provides that all applicable sales taxes, including all local sales taxes, must be paid

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<sup>6</sup> RSMo Supp. 2013.

<sup>7</sup> *Straube v. Bowling Green Gas Co.*, 227 S.W.2d 666, 668-69 (Mo. 1950).

<sup>8</sup> *State Bd. of Reg'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

<sup>9</sup> *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

when a vehicle is registered. Rasor did not pay the Wentzville portion of the local sales tax when she registered her vehicle. Therefore, she must do so now. She is entitled to a credit against the total local taxes owed in the amount of \$333.36, which she already paid for the St. Charles County portion.

### **Summary**

Rasor is liable to pay the Director's assessment of \$483.12 on her purchase of the 2007 Dodge, which is the portion of local sales tax still owed to the City of Wentzville.

SO ORDERED on April 10, 2014.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner